finding of guilt no point was taken by the appellants; it was the order based upon that finding that was in question, and as far as this was concerned I was asked by Counsel for the appellants to exercise my powers of revision and deal with the case myself. The learned Deputy Public Prosecutor agreed that this was the best course. I therefore proceeded to hear the father, who elected to give evidence on oath. He failed, however, to satisfy me that he had not conduced to the commission of the offence by neglecting to exercise due care of the child in question.

The third paragraph of the learned President's grounds of judgment reads as follows :—

"3. It is becoming increasingly obvious from cases brought in the Juvenile Court that the organisers of these illegal lotteries are using children to collect for them. The only way where there is a good family background, as there is in this case from the probation report, is to fine the parents under section 13 of the Juvenile Courts Ordinance. This is the decision that the Court came to on this occasion."

I do not find myself entirely in agreement with the suggestion that where there is a good family background the only way is to fine the parents. I should have thought that the best way would be to prosecute the organisers. There is no evidence in this case to suggest that the parents were the organisers — and if there had been they ought to have been charged themselves. Nor were the parents charged with permitting the house to be used as a common gaming house on the ground that it was used for the purposes of a lottery. It must be assumed, therefore, that they were ignorant of what was going on. I think the distinction must be kept in mind between fining parents because they are in some way connected with a lottery and fining them because they have failed to exercise sufficient control over their children.

In this particular instance it appeared that the father was a person of good character, who had been in business for some 17 years and whose business was one in quite a small way. He stated that his monthly profits were in the region of $300 to $400 a month and he had a wife and nine children to support. Counsel for the appellants and the Deputy Public Prosecutor both agreed that the powers given to the Juvenile Court by Section 12 and by Section 13 of the Ordinance are cumulative and that therefore it is permissible both to impose a fine and to order the parent or guardian to execute a bond to exercise proper care and guardianship.

Taking all the circumstances into consideration, therefore, I decided that the sentence I should impose would be a fine of $500 to be paid by the father and an order that the father do execute a bond in the sum of $250 without sureties to exercise proper care and guardianship of the offender for a period of two years.

For the reasons above given :—

(1) I set aside the finding of the Juvenile Court and ordered that the word "Convicted" be struck out of the original record and all copies thereof and the expression "Finding of guilty" substituted therefor;

(2) I set aside the sentence of the Juvenile Court and substituted therefor and order that the father be fined the sum of $500 and do execute a bond in the sum of $250 without sureties to exercise proper care and guardianship of the offender.

Order accordingly.

Solicitor for the appellants: *Lim Kheng Kooi.*

WONG KOK WAH v. REGINA

[A. Cr. J. (Spenser-Wilkinson J.) January 17, 1955]

[Penang — Criminal Appeal No. 60 of 1954]

Customs Ordinance, 1952, s. 131(1)(d) — Evidence tending to show that accused had committed a similar offence on a different occasion — Whether such evidence admissible — Procedure where Magistrate accepts accomplice's evidence without corroboration.

In this case at the trial of the appellant for being in possession of uncustomed goods, evidence was given by a prosecution witness that he had been arrested for carrying certain goods of the appellant which were Headache powders similar to those in respect of which the appellant was charged. This witness stated that the appellant gave him the goods when he was going off duty and that the appellant asked him to take the goods to a rubber godown and wait for him. The witness said he was arrested before he could reach his rendezvous.

Held: (1) the evidence of the witness was clearly evidence tending to suggest that the appellant had committed a similar offence on a different occasion; (2) such evidence was not admissible as it went to show merely that the appellant was likely to have committed the offence charged and therefore should not have been admitted.

Semble: Where a Magistrate decides to accept the evidence of an accomplice without corroboration he should give definite reasons for so doing.

Case referred to :—

(1) *R. V. Raju & Ors. v. R.* (1953) M.L.J. 21.

MAGISTRATE'S CRIMINAL APPEAL.

Lim Kheng Kooi for the appellant.

D. C. Jackson (Sr. Federal Counsel) for the respondent.

Spenser Wilkinson J. : — The appellant was charged with possession of uncustomed goods, to wit 180 dozen Tiger Headache Powders contrary to Section 131 (1) (d) of the Customs Ordinance, 1952.

There was no doubt that the appellant was found in possession of these goods and under Section 115 of the Customs Ordinance the question arose whether duty had been paid on these goods. The burden of proving that duty had been paid was upon the appellant. There were before the Court a receipt for the purchase of 200 dozen of these goods and compounding notices in respect of 58 dozen imported by P.W. 4 and sold to the appellant, 44 dozen imported by P.W. 5 and sold to the appellant, and 48 dozen imported by the appellant himself. There was evidence, however, that in respect of one of these lots imported that when the 44 dozen were imported all the packages in that lot were chopped by the Customs. None of the packages found in the appellant's room were so chopped. Nevertheless, ignoring these 44 dozen the appellant accounted for possession by him of 306 dozen of these powders and he was charged with possession of 180 dozen.

The learned President was not satisfied that the 180 dozen packages found were those which had been originally bought or compounded for partly because the first purchase was in January, 1954 whereas the offence was committed at the end of October, partly because none of the packages found bore the Customs' chop, and partly because of the evidence of P.W. 3, to which I shall presently refer. In my opinion the explanation given by the appellant in the circumstances was amply sufficient to raise a reasonable doubt as to whether or not these goods were uncustomed goods to the knowledge of the appellant and I think the learned President ought to have accepted this explanation.

I might not, however, have thought this a sufficient ground by itself for setting aside the conviction because the question of the credibility of an explanation is a matter of fact and the learned President had the advantage of seeing the appellant in the witness box.

There is, however, a more serious point to be considered in regard to the evidence of Pin bin Mat, P.W. 3. This witness stated that he had been arrested for carrying some goods of the appellant which were Headache Powders similar to those found in the appellant's room. He stated that the appellant gave him the goods at 9.30 p.m. when he was going off duty and that he asked him to take the goods to a rubber godown and wait for him. It appears that he was arrested before he could reach this rendezvous. The packages which this witness was carrying were produced as Ex. P. 6. They were not the subject matter of the charge against the appellant. The learned President came to the conclusion that this witness was an accomplice, but he states in his grounds of decision that having seen him and heard him he considered it would be safe to convict on his uncorroborated testimony.

Whilst there is some conflict of judicial authority as to the extent to which it is necessary for Magistrates to give reasons for believing or disbelieving witnesses I am of opinion that in the case of an accomplice a Magistrate should give definite reasons for believing an accomplice without corroboration. I am further of the opinion that the fact that the witness was carrying Headache Powders and that similar Headache Powders were found in the appellant's possession was not corroboration because it is obvious from the evidence that these Headache Powders are a fairly common commodity.

In my opinion, however, Pin bin Mat was not an accomplice at all in respect of the offence charged against the appellant, and I find it very difficult to see upon what grounds his evidence was admitted or admissible. This was clearly evidence tending to suggest that the accused had committed a similar offence on a different occasion and such evidence is never admissible in order to show that an accused person is likely to have committed the offence charged. I am unable to see that the evidence of this witness comes under any of the four categories laid down in the case of *R. V. Raju & Ors. v. R.*[1] as justifying the admission of this kind of evidence and the learned Deputy Public Prosecutor conceded that the evidence of this witness really amounted to the information upon which the Customs authorities had acted in raiding the appellant's premises.

In view of the fact that the learned President attached great weight to the evidence of this witness and also in view of the explanation given by the appellant I held that the conviction could not stand. The appeal was, therefore, allowed and the conviction quashed. I also quashed the order confiscating the exhibits and made an order for the return of the goods Ex. P. 1 to the appellant and the return of the documents Ex. P. 4A, B and C and D. 5.

Appeal allowed.

Solicitor for the appellant: *Lim Kheng Kooi.*

R. MUTHU THAMBI v. K. JANAGI

[A. C. J. (Spenser Wilkinson J.) February 18, 1955]

[Penang — Civil Appeal No. 4 of 1954]

Husband and wife — Maintenance — Married Women and Children (Maintenance) Ordinance, 1950 — Presumption of death of previous husband — Evidence Ordinance, 1950, s. 108 — Presumption by Court.